

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

15-CR-179-FPG

DONALD GARDNER, JR.,

Defendant.

SPEEDY TRIAL ORDER

(August 1, 2017 through September 15, 2017)

On August 1, 2017, the parties appeared before the Court for a status conference. Assistant United States Attorney Stephanie Lamarque appeared on behalf of the government. The defendant appeared personally and with his attorney, Assistant Federal Public Defender Frank R. Passafiume.

At that time, the defendant advised the Court that he needed additional time to review the Mental Competency Evaluation with his experts and prepare for a Competency Hearing. The defendant requested the Court grant a continuance of proceedings in this action in order to review the Mental Competency Evaluation as well as continue efforts for pretrial negotiations. The government did not oppose the request for the continuance.

The Court granted the defendant's request and based on the representations of the parties, scheduled a status conference for September 15, 2017 at 10 a.m. The Court excluded the time in this action from August 1, 2017 through and including September 15,

2017, pursuant to Title 18, United States Code, Section 3161(h)(1)(A) as a period of delay resulting from a proceeding to determine the mental capacity of the defendant, and in the interest of justice pursuant to Title 18, United States Code, Sections 3161(h)(7)(A) and (h)(7)(B)(iv) of the Federal Rules of Criminal Procedure, the Court having found that granting of the continuance is in the interest of justice and not contrary to the public and the defendant in a speedy trial.

Specifically, and for the reasons set forth above, the Court determines that the public's interest in conserving resources by avoiding needless pre-trial litigation, the time and expense of both a trial and a likely appeal, and combined with the certainty of conviction obtained through a plea of guilty by defendant, outweigh the public's interest in a speedy trial. Furthermore, the defendant's interests in obtaining the benefit of a lesser sentence, which would likely accompany a pretrial disposition of this matter, and in obtaining additional items of discovery necessary to inform the defendant's decision whether to plead guilty, outweigh the interests of the defendant in a speedy trial.

NOW, for the reasons set forth above and on the record in open Court on August 1, 2017, it is hereby

ORDERED, that for the reasons set forth above, the status conference is adjourned until September 15, 2017; and it is further

ORDERED, that the time in this action from and including August 1, 2017, through and including September 15, 2017, is properly excluded from the time within which trial must commence, in accordance with the Speedy Trial Act, pursuant to Title 18, United States Code, Section 3161(h)(1)(A), Section 3161(h)(7)(A), and Section 3161(h)(7)(B)(iv).

The Court further finds that as of September 15, 2017, zero days of Speedy Trial Act time will have elapsed in this action and 70 (seventy) days remain in the period within which trial must commence.

DATED: Buffalo, New York, August 11, 2017.

A handwritten signature in black ink, appearing to read 'H. Kenneth Schroeder, Jr.', written over a horizontal line.

H. KENNETH SCHROEDER, JR.
United States Magistrate Judge